enough to dislodge him. Through his use of the privy seal, of the signet, of the secret seal, and even of informal instructions or oral commands, he was able not merely to secure fulfilment of his personal will in competition with the more formal documents under the great seal which had passed out of his power with the assertion of baronial control over the Exchequer and the Chancery: he was strong enough by the same means even to invalidate the acts of these great departments of government. The King was still too powerful to be reduced to the abstraction we call the Crown. Edward for the time was successful in his challenge of "the doctrine of capacities."

The elucidation of these things leads Mr. Davies to treat of many things of the greatest importance to the legal historian. His study of this period strengthens the impression, more vividly felt, alas! by historians than by lawyers as a rule, that the definition of the jurisdiction of the several courts was in this general period by no means so exact as it is often represented, and that the organization of the courts was much more fluid. The King's frequent personal interference with the processes of the courts, which is here proved, is also likely to surprise a reader of the older histories of our law.

There is not much of a controversial nature in Mr. Davies's book. The author is usually content to illustrate and amplify views that have already been pretty generally accepted on slighter evidence. But where he does occasionally touch a controverted point his reasons are usually convincing. His fuller examination of the unprinted records somewhat dulls the edge of Stubbs's dictum that Edward II was "the first King since the Conquest who was not a man of business." In these disputed questions Mr. Davies usually follows the safe lead of Professor Tout, notably in his rejection of the theory of a struggle for power between the Exchequer and the Chancery which he characterizes as "an imaginary feud"; but in one case he presents cogent arguments for an independent view on a subject of considerable importance for the constitutional lawyer and historian. An enactment by a Parliament at York in 1322 has been supposed to be the first formal declaration that no statute is binding unless assented to by King, Lords, and Commons, and hence a landmark in the history of the House of Commons. In 1913 Mr. G. T. Lapsley cast doubt upon this by insisting that the famous enactment concerned only such matters as affect the framework of government with which the ordinances of 1311 had dealt, thus incidentally inferring what is of far greater constitutional consequence — the existence of the idea of a "constitutional law" as early as the fourteenth century. This theory has been accepted by Professor Tout, but Mr. Davies has given convincing reasons for its complete rejection. In Mr. Davies's judgment this provision refers to the *jus regni* as a whole. "What touches all should be approved by all." The real distinction drawn is not between "constitutional" matters and ordinary law, but between the *jus coronae* and the *jus regni*. The former is beyond the reach of Parliament entirely; for the latter, the assent of King, Lords, and Commons is necessary. It is not a difference between ordinary and "constitutional" enactment; it is a distinction between the law of the Crown and the Law of the Realm. For the long history of fundamental law this is of great importance. C. H. McIlwain.

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EQUITY, AN ANALYSIS OF MODERN EQUITY PROBLEMS DESIGNED PRIMARILY FOR STUDENTS. By George L. Clark, S. T. D., Professor of Law in University of Missouri. Columbia, Mo.: E. W. Stephens Publishing Company. 1919. pp. 639+52.

There is a real need for short textbooks on important branches of the law. We cannot reasonably expect more than one exhaustive treatise on a subject

like equity in a generation. Few men could give the time to collecting every point and every case which would be necessary to produce a work rivaling that of Story or Pomeroy. Nevertheless, it is well that the conclusions of these men and their editors should be continually tested by writers with diverse points of view. This may be done in an intensive study of some topic in the field, like trusts or specific performance, or by a survey of the whole subject of equity, which aims to present its nature and main principles, face and solve its baffling problems, and send its readers away better equipped to handle the mass of citations which will be found elsewhere, either in the digests and encyclopædias, or in the many-volumed treatises just mentioned. Such a short study can devote some of the time and space saved from the mechanical gathering of decisions from every state to extended theoretical discussion of problems. It can afford to omit cases, if it does not omit principles. It need not provide an extended list of citations for the verification of its statements if their accuracy is painstakingly insured. On the other hand, unless a book of this sort is true to fact and sound in theory, it is especially liable to mislead, since it furnishes no storehouse of cases by which the reader can check it up.

Professor Clark has endeavored to give us a survey of the field of equity in one volume. After an introduction on the history of equity, its nature and maxims, he takes up in turn specific performance of contracts, specific reparation and prevention of torts, prevention of crimes and criminal proceedings, trusts, reformation of instruments, rescission, bills *quia timet* and to remove cloud on title, interpleader, bills of peace, and certain miscellaneous topics. The text contains much more than the succession of abstracts of cases too often found in legal writing. Most of the leading cases included in Ames's books on Equity and Trusts are considered, and the student who is obliged to prepare himself in equity outside a law school could profitably use this work of Professor Clark's in connection with the Ames case books, reading the law review articles cited in the footnotes for further training.

It may be questioned, however, whether the student who is already familiar with the leading cases in equity and accustomed to turn them inside out in the classroom will find much here to supplement his knowledge: The book does not grapple with many of the real difficulties of the subject. No question is more important in equity than the nature of an equitable interest — is it a property right or merely a right *in personam*, a chose in action against the trustee or other holder of the legal title? Mr. Clark takes the first view (§ 280), but devotes to the problem only a page, in which he relies chiefly on secondary sources, citing only one case and not mentioning on this point the important decision, *In re Nisbett and Potts' Contract*.[1] The power of equity to award damages where no equitable relief is given receives little attention, with no citation of *Milkman* v. *Ordway*,[2] and similar decisions. Perhaps the greatest difficulty in equitable jurisdiction over torts is presented by nuisances and other torts which benefit the public at the expense of private individuals. The discussion of this question (§ 215) makes no distinction of the cases where the defendant is a public service company, so that the refusal of equity to enjoin may be regarded as merely leaving the plaintiff to an informal condemnation through an action for damages. The two sections (§§ 432, 433) on privity in bills of interpleader do little to clear up this perplexing topic. Rescission for unilateral mistake is briefly treated, and no mention made of the numerous cases recently decided where a contractor puts in a low bid because of his mistake in adding the items.[3] Indeed, there is a serious neglect of recent cases; *e. g.*, under equitable servitudes nothing is said of two very important developments.[4]

[1] [1906] 1 Ch. 386.
[2] 106 Mass. 232 (1870). See 1 AMES CAS. EQ. 571, note; 16 COL. L. REV. 326.
[3] See 30 HARV. L. REV. 637.
[4] See "Effect of Changed Conditions upon Equitable Servitudes," 31 HARV. L. REV.

Inaccuracies of statement occasionally appear. For example, in the section on the English courts before Equity (§ 3), it is said that "the habit grew up of deciding according to the decisions of previous cases," although Maitland gives strong reason for believing that the judges of the fourteenth century cited cases but rarely.[5] The common-law right of free speech is said (§ 239) to go back to the privilege of being "free from injunctions in the publication of political libels." The censorship and political prosecutions are usually stated as the reason for insistence on this right. No instance of an attempted injunction is cited, or known to the reviewer, unless the isolated proceeding of Chief Justice Scroggs be meant.[6]

The dangers of a concise textbook may be indicated by a brief examination of the discussion of waste. Professor Clark states (§ 184) that by the early common law only tenants in dower and curtesy were liable for waste. In a footnote he admits that Kirchwey has challenged this passage of Coke's, which has been a mine of historical material for so many judges deciding waste cases and which has only one fault, — it isn't so. Coke was proved wrong by the existence of several common-law actions for waste against life tenants in Bracton's notebooks.[7] In the same section it is said that an action on the case was allowed to any one whose estate was injured by acts of waste, on the authority of Williams' Saunders. It is very doubtful whether the remainderman in fee subject to an intervening life estate could bring such an action;[8] and for even an immediate remainderman for life or years no decision is cited by Sergeant Williams,[9] although the cases on which he probably relied have since been found.[10] Professor Clark mentions that equity will give relief in these cases (§ 185), without explaining why its concurrent jurisdiction was exercised in the total absence of any remedy at law. Much more could be said of the factors which govern relief against ameliorating waste that alters the premises,[11] and of the influence of length of term upon equitable relief.[12] It is stated that equity has protected a wife's inchoate dower,[13] on the authority of a case denying protection.[14]

The most interesting problem in waste is the attitude of equity toward tenants without impeachment of waste, and other persons whom it forbids to use the land unreasonably although the law court gives them complete immunity. Professor Clark says that "the real basis of the doctrine is the public and social interest in the economic and beneficial use of the land."[15] Professor Clark gives no arguments for the acceptance of this explanation, which, though given in an early case,[16] has been rejected by Lord Nottingham[17]

786, commenting upon Riverbank Improvement Co. *v.* Chadwick, 228 Mass. 243 (1917); and "Equitable Servitudes in Chattels," 32 HARV. L. REV. 278, commenting on recent United States Supreme Court cases as to restrictions upon the use and resale of chattels. In § 106 Professor Clark discusses Murphy *v.* Christian, 38 App. Div. 430, without citing the later modifying decision, Straus *v.* American, 193 N. Y. 496.

[5] SELDEN SOCIETY YEAR-BOOK SERIES, Vol. III p. x.

[6] 8 How. St. Tr. 198.

[7] 2 POLLOCK AND MAITLAND, HISTORY OF ENGLISH LAW, 2 ed., 9.

[8] 1 AMES EQ. CAS. 467, note.

[9] 2 Wms. Saund. 252, a; see 1 AMES EQ. CAS. 468, note.

[10] Jeremy *v.* Lowgar, Cro. Eliz. 461*; Cudlip *v.* Rundell, 4 Mod. 9; Hicks *v.* Downling, 1 Salk. 13.

[11] §§ 183, 185. No citation of Melms *v.* Pabst, 104 Wis. 7 (1899).

[12] No mention is made of Kingston *v.* Lehigh, 236 Pa. St. 350 (1912).

[13] § 185, note 2.

[14] However, Professor Clark cites 28 HARV. L. REV. 615, which mentions one case giving relief.

[15] § 188.

[16] Bishop of Winchester's Case, 1 Rolle Ab. 380 (I, 3).

[17] "He who hath a power to commit waste may sometimes be restrained from the

and Lord Hardwicke.[18] Equity does not ordinarily protect public and social interests, but private interests, usually in property. It will enjoin public nuisances, it is true, but only at the suit of the Attorney-General. Care for the economic and beneficial use of the land does not lead equity to prevent the utmost destruction by a tenant in fee simple,[19] and if it be said that no individual has a standing to complain against him, this argument cannot apply to a tenant in tail, who is equally free to commit waste without limit to the injury of succeeding remaindermen as well as the public welfare. It can hardly be contended that the public is not affected by waste by a jointress in tail,[20] but must be protected against the destructiveness of a tenant in tail after possibility of issue extinct.[21] Any such distinction must rest on the nature of the ownership of the waster, and not on economic welfare. There is no more social and economic interest behind the relief for equitable waste than that for legal waste or trespass or libel or most other torts, where society finds it advantageous to protect individuals from unjustified harm. In both equitable and legal waste the defendant has injured the *corpus* of the plaintiff's real estate, but in equitable waste the cause of action may be cut off by a justification (privilege or defense), due to the nature of the defendant's tenancy. The law court interpreted this defense as complete, but equity having regard to the settlor's reasonable intention [22] and the duration of the tenancy construed it as extending only to reasonable use. Obviously, the equitable side of the dispute is right, but the divergence between the two courts cannot be explained economically.

In spite of such shortcomings the book is a distinct step forward in equity textbooks. It is not a digest; it deals with principles, and it should do much to bring the conclusions of scholars to the attention of the courts. In particular, the numerous references to law review articles are very valuable. It should be helpful to practitioners in suggesting new views of equitable principles, and to students who have not been trained in case-system schools in presenting to them many of the most significant decisions.

Z. C., JR.

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THE LEAGUE OF NATIONS: THE PRINCIPLE AND THE PRACTICE. Edited by Stephen P. Duggan. Boston: Atlantic Monthly Press. 1919. pp. xv, 357.

This volume consists of a collection of essays, by sixteen contributors, on various topics of major interest in relation to a league of nations. The editor, Professor Duggan, one of the moving spirits of the League of Free Nations Association, has accomplished the purpose of eliciting a dispassionate discussion of some of the most pressing international problems of the day. Whether he has obtained substantial support for the particular Covenant now under examination by the world is more problematical. The essays were prepared

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exercise of that power, when it tends only to a private damage." Skelton *v.* Skelton, 2 Swans. 170, 172.

[18] "The question does not concern the interest of the public, unless it had been in the case of the King's forests and chases; for this is merely a private interest between the parties." Perrot *v.* Perrot, 3 Atk. 94, 95.

[19] Clark, § 186.

[20] Skelton *v.* Skelton, 2 Swans. 170, incorrectly cited for the opposite conclusion by Professor Clark in § 187, note.

[21] Williams *v.* Day, 2 Cas. in Ch. 32.

[22] The Michigan cases cited by Professor Clark in § 188 hold that the testator intended an estate without impeachment of waste, as defendant's counsel contended, and give equitable relief accordingly. His probable intention to give complete immunity is not disregarded on any economic grounds, but is at most erroneously construed not to exist.